

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIAUS DISTRICT COURT
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RYAN KERWIN : CASE NO. 05-93-ERIE
VS. : MAGISTRATE JUDGE SUSAN BAXTER
LT. WILLIAM MCCONNELL : DISTRICT JUDGE SEAN MC LAUGHLIN

MOTION TO AMEND ORDER

1. On January 22, 2006 plaintiff mailed a motion to compel to this court as a result of the defendant's refusal to cooperate in discovery. (Doc. #41)
2. In that motion plaintiff requested that the defendant pay him reasonable expenses for the cost of the preparation and filing of the motion pursuant to Fed.R.Civ.P. 37(a)(4).
3. On January 25, 2006 this court ordered the defendant to respond to plaintiff's motion to compel by February 10, 2006. (Doc. #43)
4. The defendant disobeyed this court's order by failing to respond to the motion to compel and on February 14, 2006 the court granted plaintiff's motion to compel and ordered the defendant to provide plaintiff with the requested discovery before February 22, 2006. (Doc. #44)
5. However, the court did not order the defendant to pay plaintiff the reasonable expenses incurred from the motion to compel as requested.
6. Because plaintiff made a good faith effort to confer with the defendant before filing the motion to compel and because the

defendant has failed to show the court that his behavior was "substantially justified" an award of expenses in this case is mandatory.

WHEREFORE, plaintiff respectfully requests that this honorable court readdress his motion to compel and amend it's order granting the motion to compel to include an award of expenses (\$25.00) to be paid by defendant and to plaintiff.

Respectfully submitted,

2/17/06

Date

Ryan Kerwin
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S.C.I. Albion
10745 Route 18
Albion, PA. 16475-0002

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LT. WILLIAM MCCONNELL : MAGISTRATE JUDGE SUSAN BAXTER
: DISTRICT JUDGE SEAN MCLAUGHLIN

CERTIFICATE OF SERVICE

I hereby declare that I mailed a true and correct copy of the attached motion to amend order and the brief in support thereof to the defendant's counsel at the following address:

Kemal Alexander Mericli
Office of Attorney General
564 Forbes Ave.
Manor Complex
Pittsburgh, PA. 15219

2/17/06

Date

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